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673706—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 510

PAUL KNAUER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 83–96) is reported at 149 F. 2d 519. The findings of fact and conclusions of law of the district court appear at pages 19–43 of the record.[1]

JURISDICTION

The judgment of the circuit court of appeals was entered May 29, 1945 (R. 96), and a petition for rehearing was denied June 28, 1945 (R. 97). On September 22, 1945, petitioner's time to file a petition for a writ of certiorari was extended by Mr. Justice Rutledge to October 15, 1945, and the

[1] References to the printed record are designated as "R." References to the stenographic transcript of the proceedings of petitioner's individual trial are designated as "Tr."

petition for a writ of certiorari was filed on that date. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a certificate of naturalization may be canceled under Section 338 of the Nationality Act of 1940 upon proof that the alien procured citizenship by fraudulently declaring on oath that he absolutely and entirely renounced all allegiance to the country of origin and that he would bear true faith and allegiance to the United States.

2. Whether there was clear, unequivocal, and convincing evidence of such fraud.

STATUTE INVOLVED

Section 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U. S. C. 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

STATEMENT

Petitioner, a native of Germany who had served in the German Army during World War I, arrived in the United States in April 1925 (Ex. PK–1, Tr. 21–22, 156). He was 30 years old at the time and had studied law and economics in Germany for three years (Tr. 156–157). He filed his declaration of intention to become a citizen in December 1929, and his petition for naturalization on November 20, 1936. He took the oath of allegiance and was admitted to citizenship on April 13, 1937. (Ex. PK–1, Tr. 21–22.)

In February 1943, the United States, proceeding under Section 338 of the Nationality Act of 1940 (8 U. S. C. 738), instituted a suit in the District Court for the Eastern District of Wisconsin seeking to cancel petitioner's certificate of naturalization on the ground that it had been secured by fraud in that petitioner had falsely and fraudulently alleged in his petition that he was attached to the principles of the Constitution of the United States and had taken a false oath of allegiance (R. 1–3). On motion of the United States Attorney (R. 11–15), the proceedings against petitioner and thirteen other persons were consolidated for the purpose of receiving evidence common to each case concerning the organization, aims, and activities of the German-American Bund and its affiliates (R. 16–18). After the joint trial on this issue, the district judge entered

findings of fact and conclusions of law, in which he concluded that the Bund and its predecessors were un-American and subversive, and that their teachings were contrary to the principles of the Constitution of the United States, but that the fact that a person was a member of the local unit of the Bund was not in itself sufficient to prove such fraud as would warrant cancellation of a decree of naturalization (R. 19–27).

Thereafter, petitioner's case was tried individually. At the conclusion thereof, the district court entered detailed findings of fact (R. 30–42), which contain a full account of petitioner's activities. We shall set out here a briefer summary of the evidence adduced at petitioner's individual trial.

As early as 1931, six years before his naturalization, and two years before Hitler's advent to power, petitioner expressed approval of the National Socialist Party in Germany (Tr. 504). In 1934 he visited Germany (Tr. 158) and, upon his return, spoke enthusiastically of the accomplishments of the Hitler regime (Tr. 447–449, 467). He told a business associate that while there he had been presented to Hitler (Tr. 473). He also appears to have spoken to German Government officials about the exhibition of German films in the United States for, in January 1935, the Federation of German-American Societies in Wisconsin received a letter from the German Consul, who stated that he would comply with

petitioner's request, made in Berlin, for free delivery of films (Tr. 461-462). During the winter of 1934 and 1935, petitioner was active in obtaining contributions to the German Winter Relief Fund (Tr. 375–376, 418–419), an official agency of the German Government under the direction of the Minister of Propaganda and Enlightenment, for which German consulates solicited money in the United States in order to obtain foreign exchange (Tr. 396, 409–410, 412). Petitioner forwarded the money collected to the German Consul in Chicago (Tr. 368).

The Federation of German-American Societies in Wisconsin had about 70 affiliated organizations in 1935 (Tr. 414). Continuously, from 1933 to 1936, petitioner, Froboese, the leader of the Milwaukee unit of the Bund, and others endeavored to have the swastika flag displayed at important celebrations of the Federation (Tr. 416–418, 506). On May 31, 1935, petitioner made a motion to have the Federation recognize the swastika as the flag of the German Reich, although it was not the official German flag at that time (Tr. 421–422, 435, 436).[2] The swastika was hoisted at a German Day celebration in 1936, without approval by the Federation, and a disturbance ensued in which men in Bund uniforms participated (Tr. 427–428, 430–431, 450). At the next meeting of the Federation, petitioner pro-

[2] The swastika was not officially recognized as the German national flag until September 15, 1935 (Tr. 460).

posed a vote of confidence in the chairman of the entertainment committee, a motion which was understood to mean approval of the showing of the flag. The motion failed and a vote of censure was taken. (Tr. 428–430, 498.)

Following this incident, Froboese and others discussed the formation of the German-American Citizens Alliance to compete with the Federation (Tr. 523–524, 534–535). The alliance took on organized form about January 1937 (Tr. 555, see also Tr. 75). Among the early attendants at the meetings were well known members of the Friends of New Germany and the Bund (Tr. 544–546). The organization was designed to attract persons who were sympathetic but did not wish openly to be known as Bund members (Tr. 565–566). Its constitution and articles of incorporation provided that, upon dissolution, all of its assets were to become the property of the Deutsches Ausland Institut (Ex. PK–12, PK–14, Tr. 161, 162), a German Government agency for the dissemination of propaganda among Germans in foreign countries (Tr. 389–394).

Petitioner was formally accepted as an individual member of the Alliance on February 22, 1937, 55 days prior to his naturalization, and was immediately made a member of the executive committee (Tr. 83). He volunteered to collect articles that attacked the Alliance, German-Americans, and Germany (Tr. 82). On April 12, 1937, the day before he was admitted to citizenship, he was

elected master of ceremonies for a German day celebration to be held on June 5 (Tr. 87). On May 3, it was announced that the German Consul would present to the Alliance the very swastika flag which had been torn down at the Federation celebration the year before (Tr. 88). A few months after his naturalization, petitioner proposed that the Alliance sponsor a solstice ceremony at which a wooden swastika was to be burned as a symbol of the unity of the German people (Tr. 93–94, 553–554).

Petitioner became a dominant member of the Alliance. As its spokesman in the years from 1937 to 1941, he wrote many letters and telegrams in which he vigorously denounced persons who criticized the Bund or the German Government (Tr. 101, 105, 108, 113, 114, 117–118, 167–169, 171–172, 175, 179–181, 185–191, 198–203, 210–211, 219–220, 259–262, 275–276, 278, 285, 293). In speeches in 1937 and thereafter, petitioner stressed the unity of the "Deutsches Volkstum," stating that "with the rise and the fall of the German nation we rise and fall" (Tr. 552–553). He arranged for the public showing of German films glorifying the Nazi cause (Tr. 126, 241–242, 305–306, 512, 516). In December 1938, together with Froboese, petitioner made threats against the manager of a radio station which cancelled a contract for a German radio hour, on which the Horst Wessel song had previously been sung (Tr. 570–576, 590–595). In March 1938, petitioner was elected vice-president

of the Alliance and thereafter presided at most of its meetings (Tr. 113–119, 127–139).

The Alliance and the Bund worked closely together. The Bund camp was made available to Alliance members (Tr. 86–87), and Alliance festivals were held at the camp (Tr. 94–107, 133, 136). The Alliance supported various Bund programs (Tr. 104, 105, 106, 127, 128). At petitioner's suggestion, the Alliance agreed to support Froboese, the Bund leader, by supplying an attorney in an action brought against him (Tr. 109–112). In 1940 the Youth Group of the Bund was admitted into the Alliance at the request of Froboese, who thought that more members might be secured if the Youth Group were less openly associated with the Bund (Tr. 134, 542–543).

In 1936, prior to his naturalization, petitioner attended Bund meetings (Tr. 470–471, 681, 685). In that year he enrolled his 10-year old daughter in the Jugendschaft, the Youth Movement of the Bund (Tr. 361, 597). Mrs. Merton, who acted as secretary to Bund leader Froboese from March 1938, testified that, during the period she worked for Froboese, he and petitioner cooperated closely on Bund matters (Tr. 23–27). Froboese consulted petitioner about articles in the Bund's organ, the Weckruf, about speeches to be given by Froboese, and resolutions to be offered at the 1938 Bund convention (Tr. 27–31). During Froboese's absence, Mrs. Merton was directed to consult petitioner for advice on Bund matters

(Tr. 30). In August of 1938, when Froboese was called to the United States Attorney's office for investigation, he immediately called petitioner and told him of the precautions he had taken to send his correspondence and documents to German consular officials and to Germany (Tr. 45–48). Petitioner attended closed meetings of the Bund leaders and acted as adviser (Tr. 676–677, 678–680, 707–709, 722, 729, 730). Letters signed jointly by Froboese and petitioner were sent to Hitler and to Bohle of the Ausland's Institut (Tr. 48–51, 54, 58). Birthday greetings sent to Hitler by Froboese and petitioner closed with the phrase "in blind obedience I follow you" (Tr. 49–51). In 1939, petitioner actively participated in recruiting skilled workers to return to Germany to work in industries there (Tr. 677–678, 715–717, 725–728).

In 1938 petitioner told Mrs. Merton that the Bund represented the "Fuehrer's grip on American Democracy" (Tr. 62–63). When questioned as to how he reconciled his sentiments with his American citizenship, he stated that citizenship was "a good thing to hide behind" (Tr. 63).

The detailed findings of the district judge are summed up in his last two findings as follows (R. 41–42):

> 60. The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the

Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promotion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in and attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German-American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a

time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government.

61. Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was

not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

On the basis of these findings the judge concluded that petitioner's certificate of naturalization was "fraudulently and therefore illegally procured" and should be canceled (R. 43). The judgment canceling the certificate of naturalization (R. 44) was affirmed on appeal (R. 96).

ARGUMENT.

Petitioner's chief contentions are that a false oath of allegiance is not the type of fraud which will support a suit for cancellation of a certificate of naturalization under Section 338 of the Nationality Act, and that the judgment admitting him to citizenship is res adjudicata on the question of his right to naturalization (Pet. 11–15, 20–37, 45–47). These questions were discussed at length in the Government's brief in the case of *Baumgartner* v. *United States* (No. 493, October Term, 1943, pp. 39–58). Neither the decision in that case, 322 U. S. 665, nor that in *Schneiderman* v. *United States*, 320 U. S. 118, supports petitioner's position. On the contrary, this Court in the *Schneiderman* case expressly declared that it was not passing on the question of fraud and, implicit in the *Baumgartner* decision, we think, is the recognition that fraud in the oath of allegiance is a basis for cancellation of a certificate of naturalization, provided, of course, that the Government's

case has "that solidity of proof which leaves no troubling doubt." 322 U. S. at 670.

This is the first case decided by a circuit court of appeals since the *Baumgartner* decision in which such solidity of proof has been found. We submit that the decision below is in full accord with the principles enunciated by this Court in the *Baumgartner* and *Schneiderman* decisions. Petitioner was naturalized in 1937, four years after Hitler had come to power, when Nazi theories had already been translated into practice, and Nazi aims were well known. Petitioner, an educated and articulate man, who had visited Germany and had there read Mein Kampf (Tr. 377–378), was unquestionably familiar with Nazi ideals and practices. He must have known that Nazi principles of leadership and racial domination were incompatible with American democracy, and that Nazi concepts of the German Volkstum required an overriding allegiance to the Hitler Reich which was incompatible with the wholehearted renunciation of allegiance to the country of origin required for American citizenship. The evidence establishes beyond a troubling doubt that, before petitioner was naturalized, he had not only espoused these principles, but was actively seeking to further them. His aid to the German Winter Relief Fund, his persistent efforts to secure recognition of the swastika even before it became the official flag of Germany, his attendance at Bund meetings, his enrollment of

his daughter in the German Youth Movement, all mark him with the Nazi stamp before the date of naturalization. The fact that in February 1937, just before his naturalization, he was immediately elected a member of the executive committee of the German-American Alliance shows that the Bund leaders who formed that organization had full confidence in his loyalty to their ideas. Petitioner seems to have become more openly active at about the time of his naturalization and during the years that followed, but that fact, considered together with petitioner's known prior Nazi sympathies, tends to support rather than to negate the charge of fraud. That his activities increased in scope at about the time of his naturalization suggests that he was artfully using his citizenship, as he later stated, as "a good thing to hide behind." Considering all the circumstances, we think that the evidence in this case establishes, in the terms of the *Baumgartner* decision (322 U. S. at 672), not only "objective falsity" of his oath of allegiance, but its "perjurious falsity" as well.

This case is entirely different from that of Baumgartner. In 1937, when petitioner was naturalized, the German Government was that of Hitler, not of the Weimar Republic, and the evidence is clear that petitioner never intended to and never did abjure allegiance to Hitler Germany. Moreover, the evidence here did not consist solely of expressions of opinion long after

naturalization; the proof establishes that petitioner was an active exponent of Nazi views prior, during, and immediately after the time of naturalization. The *Baumgartner* and *Schneiderman* decisions do not hold, as petitioner claims (Pet. 12, 13, 14, 19, 40–42), that proof of conduct subsequent to naturalization is irrelevant; they merely hold that subsequent conduct is not of itself sufficient to establish the state of mind at the time of naturalization. Certainly, activity immediately following the date of naturalization which is part of a continuous course of action evincing loyalty to the country of origin, is strong probative proof that the abjuration of former allegiance had not been made in good faith. Finally, petitioner, as distinguished from Baumgartner, did not confine his activities to expressions of opinion alone; his beliefs manifested themselves in overt acts of direct aid to the Nazi cause. Petitioner stresses the fact that there is no direct proof of his membership in the Bund (Pet. 14, 49). However, he was shown to have been a leading voice in Bund councils in 1938, working closely with Froboese, the Bund leader, and it is fair to infer that he did not attain such a degree of prominence without prior service in the cause. This evidence amply justifies the finding of the district judge that "petitioner was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members." (Finding 50, R. 38.) Moreover, just as

membership per se is not the decisive factor in establishing fraud in the oath of allegiance, so lack of membership per se would not necessarily disprove fraud. The record as a whole fully supports the trial judge's findings that "most of his [petitioner's] interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objectives of the Bund" (Finding 50, R. 38). More than that, the evidence establishes that most of petitioner's activities were in behalf of Nazi Germany and that, although aware of its aims and purposes, he deliberately and vigorously promoted the objectives of Nazi Germany. Whether he furthered those purposes by Bund membership or by appearing as a "front" without officially joining the Bund is unimportant. The vital factors are that petitioner gave his loyalty to Hitler Germany before he was naturalized, that he never abjured that loyalty, and that his purported abjuration of loyalty to Germany and oath of allegiance to the United States were deliberately and consciously false.

CONCLUSION

The decision below is in accord with the principles enunciated by this Court in the *Baumgartner* and *Schneiderman* cases. The judgment is supported by clear, unequivocal and convincing evidence that petitioner, who at the time of nat-

uralization actively espoused and assisted the cause of the then existing Government of Germany, was guilty of conscious fraud in taking an oath of allegiance to the United States. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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